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BAY AREA RAPID TRANSIT DISTRICT

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

PATRICIA NASH,

Plaintiff,

vs.

BAY AREA RAPID TRANSIT DISTRICT, DOES  
1- 40,

Defendants.

NO. C 05 5307 VRW

**DECLARATION OF MARK F.  
HAZELWOOD IN SUPPORT OF  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT, OR  
ALTERNATIVELY, PARTIAL  
SUMMARY JUDGMENT**

I, Mark F. Hazelwood, declare as follows:

1. I am attorney at law duly licensed to practice before all courts of the State of California, and this court. I am a shareholder with the law firm of Low, Ball & Lynch, attorneys of record for defendant Bay Area Rapid Transit District ("BART") in this matter. If called upon to testify to the facts contained herein, I could testify competently thereto, based on personal knowledge.

2. Attached as Exhibit A to this declaration are true and correct copies of portions of the deposition of Patricia Nash.

3. Attached as Exhibit B to this declaration are true and correct copies of portions of the deposition of David Sanborn.

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1 I declare under penalty of perjury under the law of the State of California that the foregoing is  
2 true and correct. Executed this 14<sup>th</sup> day of February, 2008 at San Francisco, California.

3  
4   
5 MARK F. HAZELWOOD

**EXHIBIT “A”**

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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**CERTIFIED COPY**

PATRICIA NASH,

Plaintiff,

-vs-

BAY AREA RAPID TRANSIT  
DISTRICT, DOES 1 - 40,

Defendants.

No. CO5 5307-VRW

DEPOSITION OF PATRICIA NASH

Wednesday, November 15, 2006

REPORTED BY: BRIAN DEZZANI, CSR #4572

ROOMIAN & ASSOCIATES  
DEPOSITION REPORTERS  
225 BUSH STREET, SUITE 348  
SAN FRANCISCO, CALIFORNIA 94104  
(415) 362-5920

1 Q. And when you say young, how young? When you  
2 were in your childhood years?

3 A. Yeah, when I was in my childhood years.

4 Q. Okay.

5 A. And I believe actually I lost light perception  
6 during the pregnancies. That's when I lost the most of  
7 it.

8 Q. All right. Now, my understanding is that you  
9 read Braille; is that correct?

10 A. Yes, I love Braille.

11 Q. And did you -- when did you learn to read  
12 Braille?

13 A. When I was six years-old.

14 Q. And you said that you have taught Braille to  
15 students?

16 A. Yes.

17 Q. For how long a period of time have you done  
18 that?

19 A. From 1970 -- excuse me. From 1997 until the  
20 last student I had. His contract ended at the beginning  
21 of October.

22 Q. Of 2006?

23 A. Yes. So I don't have a student right now, but  
24 I'm looking for some.

25 Q. What education or training have you had during

1 your life in terms of transportation, going out in  
2 public as a blind person?

3 A. Well, in 1969 I attended the Orientation  
4 Center for the Blind, and we had mobility training  
5 there. And then between 1966 and 1968, I also received  
6 mobility training in Santa Cruz County with an itinerant  
7 mobility instructor.

8 And in -- let's see.

9 Oh, also at California School for the Blind, I  
10 received some mobility training in 1963 in my ninth  
11 grade year of school.

12 And recently I had some help from two travel  
13 instructors through the Title Seven program at the  
14 Alliance Blind Center to help me cope with the accident  
15 that I experienced in BART, to use BART again and on --  
16 and also in -- or 2003, when I was attending college,  
17 maybe it was 2002, I'm not sure which year, I had help  
18 to learn the campus that I attended, College of Alameda,  
19 and also to acquaint myself to South Shore and Park  
20 Street, the shops there and everything.

21 Q. And what courses were you taking at Alameda in  
22 2002, 2003?

23 A. The business administration, medical  
24 transcription, medical terminology and creative writing.

25 Q. Did you get all of the certificates through

1 A. Yes, the station agent.

2 Q. Okay. Had you ever had any training or  
3 assistance in riding BART before the accident?

4 A. No, I didn't need training. I worked for 10  
5 years in San Francisco, and used BART for eight of those  
6 years everyday of my life, and so I learned it on my  
7 own.

8 Q. Were you aware prior to the accident that BART  
9 had educational programs or assistance for blind people  
10 to learn about their system?

11 A. No, I was not, but I wouldn't have felt that I  
12 needed any sort of assistance because I was familiar  
13 with BART.

14 Q. Was the assistance that you received in  
15 learning the -- the assistance that you received through  
16 Sarah and the other person through the Lions Blind  
17 Center helpful?

18 A. Especially with the assistance I received from  
19 Sarah was helpful.

20 Q. How was it helpful?

21 A. She understood the fear that I felt after the  
22 accident about approaching the train, boarding the  
23 train, riding the train, being in the station, being on  
24 BART at all, and she was very patient with me and  
25 observed my technique, and was supportive of me.

1 A. Yeah. Yeah, I'm not that much closer, but  
2 half the distance.

3 Q. Yeah. For the last -- so from about 1975 to  
4 1982 you took BART everyday to and from work?

5 A. Yes. Yes, I did.

6 Is there any water?

7 MR. KASHDAN: Sure.

8 MR. HAZELWOOD: Q. Let me go back to your  
9 Braille teaching work where you've earned money. You  
10 said you started about June, 2000.

11 What I'd like you to do for me, as best you  
12 can, is estimate for me how much you've made in earnings  
13 each year.

14 A. That would be difficult.

15 Q. Yeah.

16 A. Because what happens is I began with my --  
17 with my counselor, who is my own rehab counselor. The  
18 first student I think she referred to me wasn't until  
19 the beginning of 2001.

20 Q. So really the work started in 2001?

21 A. Yes, in 2001.

22 Q. Okay.

23 A. And that -- most of the contracts would  
24 involve about two -- like four to five -- five hours a  
25 week, four or five hours a week. Mostly they were five



1           A.     Well, until I began working in 2001, and  
2     primarily at -- Well, no. Let's see. In 2001 I had a  
3     student in San Francisco, I think, or maybe -- oh, I'm  
4     not positive. Maybe she was -- I got to think, but  
5     between 1994 you said?

6           Q.     Let's do it this way to make it easier.

7           A.     Okay.

8           Q.     Before you started teaching Braille --

9           A.     Yes.

10          Q.     -- how often did you use BART?

11          A.     Not horribly frequently, just to go to maybe  
12     San Francisco or like with the kids or -- not real  
13     often. Maybe once every couple of months or three  
14     months or something like that.

15          Q.     Okay. Did that frequency change when you  
16     started teaching Braille to students?

17          A.     Yes.

18          Q.     And how did it change?

19          A.     Well, I had students in Contra Costa County,  
20     San Francisco that I needed to see. One I met at her  
21     work in San Francisco, and I met students where it was  
22     convenient for them, because some of them are newly  
23     blinded so it was necessary that I go to their homes.

24          Q.     Okay. So from 2001 up until the time of the  
25     accident, how often were you using BART?

1 A. Four times, maybe four days a week.

2 Q. Okay. And the stations would change with  
3 respect to the students changing?

4 A. Yes.

5 Q. Okay. Can you give me kind of a rundown of  
6 which stations?

7 A. Lafayette.

8 Q. Okay.

9 A. 16th and Mission -- I'm trying to think what  
10 was the one that I went to for? What's her name?

11 Another one in San Francisco -- I think Civic  
12 Center.

13 Q. Okay.

14 A. I think that's it.

15 Q. Okay. Did you use 16th Street at all before  
16 you started providing instruction to Richard?

17 A. No.

18 Q. Okay.

19 A. Oh, but my social life increased a lot too as  
20 I was starting to teach Braille. I would go to Hayward  
21 and Concord to visit friends every week, like dating and  
22 stuff.

23 Q. Okay. This was all between 2001 and --

24 A. 2003 -- 2002 and -- yeah.

25 Q. Okay. And at any time between when you

1 started working teaching Braille, 2001, and the time of  
2 the accident, did you get any instruction in using BART?

3 A. No. I think I need to take a break to use --

4 MR. HAZELWOOD: Let's take five minutes.

5 Absolutely.

6 (Break taken.)

7 MR. HAZELWOOD: Let's go back on the record.

8 Q. Ms. Nash, before the accident of August 19th,  
9 2004, had you had any accidents or injuries using the  
10 BART system before?

11 A. No.

12 Q. Before the subject accident, had you ever  
13 contacted anyone at BART about any problem that you had  
14 using the system?

15 A. No.

16 Q. As of August 19, 2004, were you registered or  
17 certified to use the East Bay Paratransit or any other  
18 paratransit program?

19 A. Yes.

20 Q. Okay. Can you tell me what services you used?

21 A. East Bay Paratransit.

22 Q. Okay. And were you registered with them?

23 A. Yes.

24 Q. When did you first become registered with East  
25 Bay Paratransit?

1 Q. If you weren't familiar with the route, then  
2 you might use a paratransit service?

3 A. Yes.

4 Q. Okay. All right. Now, when you -- let's go  
5 back to the day of the accident.

6 Were you using any assistive devices on your  
7 trip to San Francisco such as your cane?

8 A. My cane.

9 Q. Okay. All right. And that's a -- how would  
10 you describe that cane? It's a white traditional cane  
11 used by people who're sight impaired?

12 A. Yes, a white cane.

13 Q. In the -- did you have a guide dog with you  
14 that day?

15 A. No.

16 Q. In the -- did you have a guide dog at that  
17 time?

18 A. No.

19 Q. Have you ever had a guide dog?

20 A. No.

21 Q. Okay. When you traveled to San Francisco that  
22 morning, were you alone?

23 A. Yes.

24 Q. And you told us that the appointment was at  
25 8:00 a.m.?

1 A. Yes.

2 Q. Did you have any problems using BART to get to  
3 the appointment that day?

4 A. No.

5 Q. And the appointment was at 9:30 a.m.?

6 A. Yes.

7 Q. And you left Richard's residence shortly  
8 thereafter?

9 A. Yes.

10 Q. And did you walk then back to the 16th Street  
11 Station?

12 A. Yes.

13 Q. All right. Now, when you entered the 16th  
14 Street Station on your return trip, were you alone?

15 A. Yes.

16 Q. Okay. And were you carrying anything other  
17 than your cane?

18 A. My back -- I was wearing a backpack.

19 Q. Were you carrying anything else other than the  
20 cane?

21 A. No.

22 Q. That's okay.

23 A. That was an extra answer again.

24 Q. So you just had your backpack and your cane;  
25 is that right?

1 Q. That's your best recollection?

2 A. Yes.

3 Q. Okay. Had you ever used stations agents --  
4 this is prior to the accident; had you ever used a  
5 station agent to assist you in getting down to a  
6 platform or up to a platform at a BART station before?

7 A. Yes.

8 Q. How many times had you done that? Could you  
9 estimate that for me?

10 A. Oh, God.

11 Q. I know. A hard one.

12 A. No. Just if I weren't familiar with a route.

13 Q. Okay. So is it correct that you were aware  
14 that a station agent was available to assist you if you  
15 needed help?

16 A. Yes.

17 Q. Okay. Again, if you remember, great. If you  
18 don't, that's fine too.

19 Do you happen to remember the name or names of  
20 any station agents that had assisted you in the past?

21 A. No.

22 Q. Okay. All right. So you told us that you  
23 took the escalator down to the platform level; correct?

24 A. Yes.

25 Q. And is it your recollection that there's only

1 A. I don't know how to explain that.

2 Q. Yeah.

3 If you -- okay.

4 Did you stay close to the bottom of the  
5 escalator, or did you walk in a certain direction along  
6 the platform?

7 A. You know, I don't remember. It's been so long  
8 since I've been there.

9 Q. So you don't specifically remember what you  
10 did that day in terms of positioning yourself?

11 A. I believe that I probably walked down the  
12 platform some, just so that I would be where a train  
13 would be. I mean, because sometimes the trains are  
14 short and you have to know that you're going to be where  
15 the train would arrive, but -- yeah.

16 Q. Okay. So let's -- this is one of those  
17 questions, Ms. Nash, where I don't want to know what you  
18 normally do.

19 A. Okay.

20 Q. What I want to know is if you specifically  
21 recall what you did that day.

22 And do you specifically recall what you did in  
23 terms of positioning yourself that day after you got  
24 down --

25 A. No. No.

1 to position yourself so that you were in a cue area for  
2 the doors?

3 A. Yes, insofar as possible. I mean --

4 Q. How did you do that?

5 A. I was on -- I was positioned on the platform  
6 where the train would arrive, so I mean, the -- the door  
7 might not be directly in front of me, but I wouldn't  
8 have anyway of knowing that --

9 Q. Okay.

10 A. -- the train arrived.

11 Q. Were you aware prior to the accident that  
12 there are designated areas on the platform where -- that  
13 are marked where the doors -- where the doors will be  
14 when the train comes to a stop?

15 A. No.

16 Q. Okay. In essence, there are black markers  
17 that interrupt the yellow tag tail edges that are  
18 indicators of where the doors will be. Did you know  
19 that before the accident?

20 A. No.

21 Q. Okay. When you had been at BART stations in  
22 the past, had you ever asked other passengers if you  
23 were in a proper position?

24 A. Yes.

25 Q. Okay. Did you do that on this occasion?



1           A.     I don't recall that. There were people  
2 waiting for the train, but no, I didn't.

3           Q.     Okay. All right. So you perceive that the  
4 doors opened to your left?

5           A.     M-hmm.

6           Q.     What did you do at that point?

7           A.     I used proper cane technique, and I walked to  
8 my left and to find a door opening so that I could board  
9 the train.

10          Q.     All right. Can you tell me how far you walked  
11 to your left, how many steps you took?

12          A.     No.

13          Q.     Can you estimate?

14          A.     No. I mean, I walked to where I thought I  
15 perceived the opening to a door.

16          Q.     All right. And can you tell me from the time  
17 that you -- that the doors opened, how many steps you  
18 took?

19          A.     No.

20          Q.     Can you give me any estimate in any way?

21          A.     No. I'm not good -- I'd say maybe -- I don't  
22 know how many steps. I don't know.

23          Q.     Okay. Can you tell me how far you traveled  
24 from your original position to the left? How far left  
25 you traveled?

1 to your left?

2 A. Yes.

3 Q. We don't know how far; correct? And then you  
4 were using your cane to tap for the entrance to the  
5 doorway?

6 A. Yes.

7 Q. All right. In the past when you had done  
8 that, did that have a certain sound or feel when you  
9 would tap inside the car?

10 A. Well, some cars have carpeting and so you can  
11 tell right away that you're in a car, and others don't.

12 Q. Okay. So what are the other cars, what  
13 feeling does that have?

14 A. Oh, whatever the surface of the car is, I  
15 don't know what it is.

16 Q. Well, would it be metal?

17 A. It's -- I know what it feels like, but I can't  
18 explain it.

19 Q. Okay.

20 A. With my cane, I know what it feels like.

21 Q. Okay. When you felt that day, did it feel  
22 like carpet?

23 A. No.

24 Q. Okay. Did it feel consistent with other train  
25 openings that you had on BART in the past?

1           A.     I don't know when -- I don't know when I  
2     determined that I wasn't -- that it wasn't a floor  
3     surface.

4           Q.     At some point did you determine it was not a  
5     floor surface before you fell?

6           A.     No. Well, I don't think so, because I  
7     remember saying, wait. And that's the last thing I  
8     remember.

9           Q.     Who were you saying wait to?

10          A.     To the train.

11          Q.     Okay. And were you -- were the train doors  
12     closing?

13          A.     I don't know.

14          Q.     Were -- okay. Where were you when you said  
15     wait?

16          A.     Between two of the cars.

17          Q.     Had you fallen?

18          A.     No. I think I was -- probably knew that I was  
19     going to or get hit by the train. One --

20          Q.     Okay. Again, I'm trying to --

21          A.     One or the other.

22                 I was either going to get hit by the train or  
23     fall. I don't know. I mean, I don't know. I don't  
24     know.

25          Q.     All right. Is it your recollection that you

1 were saying this as you were in the process of falling?

2 A. I don't know.

3 Q. Okay.

4 A. I just remember saying wait when I was -- I  
5 wasn't going to the door of the car.

6 Q. Okay. And when you tap, do you tap in a  
7 certain regimented way?

8 I mean, do you take to the side and then  
9 forward? I mean, is there some technique that you use?

10 MR. KASHDAN: You mean as a practice? Not  
11 that particular day?

12 MR. HAZELWOOD: I'll ask about the practice  
13 first, and then ask her if that was what she was doing  
14 that day.

15 MR. KASHDAN: All right. Okay.

16 THE WITNESS: Yes.

17 MR. HAZELWOOD: Q. What's your practice  
18 normally?

19 A. You put your cane out and determine what  
20 surface you're feeling or what -- where you are and that  
21 -- and then you can go forward.

22 Q. Okay. So is this part of that? Determining  
23 what surface you are feeling?

24 A. Pardon me?

25 Q. You said that you put your cane out to

1 determine what surface you are feeling?

2 A. Yes.

3 Q. All right. So as part of your normal practice  
4 to determine what surface you are, in fact, feeling?

5 A. Well, it's to determine that you're going into  
6 the -- into the door, and I mean, into the train, yes.

7 Q. Okay. And just in terms of the way you do it,  
8 so you tap forward. Do you tap to the sides also?

9 A. Yes.

10 Q. So tell me you how you do that normally?

11 A. Just it's -- as though you were walking you  
12 move your cane from left to right and -- or from right  
13 to left to see what's in front of you.

14 Q. Okay.

15 A. And then, of course, you have to -- Well, then  
16 -- well, that's it.

17 Q. Okay. So you move your cane from left to  
18 right in front of you?

19 A. Yes.

20 Q. And then you're tapping it on the ground as  
21 you're doing so?

22 A. Yes. Well, I have a -- I have a cane that  
23 rolls. I have a marshmallow tip.

24 Q. A marshmallow tip?

25 A. Yeah.

1 Q. And why do you have a marshmallow tip?

2 A. I don't know. I guess because it's the newest  
3 thing and the travel teacher recommended that I have it.

4 Q. What purpose is having that tip?

5 A. Well, then you can just roll it and you don't  
6 have to pick it up.

7 Q. And did you have one of these tips at that  
8 time?

9 A. No.

10 Q. And on the day of accident did you have a  
11 marshmallow tip?

12 A. No.

13 Q. Okay. And do you remember then in terms of on  
14 the morning of the accident what you were doing -- what  
15 your technique you used to try to detect the door  
16 opening?

17 A. I moved my cane from left to right. I would  
18 if I were walking or --

19 Q. Okay. And each time that you're moving left  
20 to right, are you tapping it on a surface?

21 A. Yes.

22 Q. Okay. And describe for me what you felt or  
23 heard as you were doing it -- as you attempted to board  
24 the Richmond bound train?

25 A. I don't know what I felt. A surface, but I

1 don't know at what point I determined that it wasn't the  
2 floor of the car, and that it -- that I was going  
3 between the two cars. I don't know at what point, so I  
4 don't -- really, I'm not sure how to answer that.

5 Q. You knew it wasn't the carpet; correct?

6 A. Yes.

7 Q. Okay. At any point before you fell, did you  
8 determine it was not the interior of the car?

9 A. I just said that I don't know at what point I  
10 did, so I can't tell you. I don't know.

11 Q. Okay. All right. When you -- it's correct  
12 that you fell in between two cars; is that your  
13 understanding?

14 A. Yes.

15 Q. And at that point were you -- what foot was  
16 stepping off?

17 A. I don't know.

18 Q. Okay. Are you right-handed or left-handed?

19 A. I'm right-handed.

20 Q. And were you carrying your cane with your  
21 right hand?

22 A. Yes.

23 Q. You want to take a break for a minute?

24 A. This is really difficult.

25 Q. Do you want to keep going?

1 cars, and I just lost -- the last thing I remember was,  
2 you know, saying wait, you know, like it's sort of  
3 futile, but I knew that nobody had probably seen me and  
4 that the train was getting ready to leave and that I  
5 wasn't going inside of the car.

6 Q. And what's the next thing you remember?

7 A. I remember standing up with my hands on the  
8 top of the BART track and saying, "Excuse me. Could  
9 somebody please help me?"

10 Because I knew that I had only six more  
11 minutes until the next train would arrive.

12 Q. All right. Had the -- okay.

13 Again, I just want to -- so you are saying  
14 wait, and that was right before -- or somewhere around  
15 the time that you were falling; correct?

16 A. Well, I don't -- I don't remember falling. I  
17 remember -- I mean, I must have known that I wasn't  
18 going into the car.

19 Q. Okay. When you remember standing up and  
20 putting your hands on top of the BART track, had the  
21 train already left the station?

22 A. Yes.

23 Q. Okay. So you don't -- is it correct that you  
24 don't have any recollection of the train leaving; is  
25 that right?



1 A. No.

2 Q. Is that correct?

3 A. Yes.

4 Q. Okay.

5 A. But I must have known that because I knew  
6 where I was standing. If another train came, I would  
7 probably get killed, or at least I thought I would get  
8 hit by the train.

9 Q. So you had a feeling that you needed to get  
10 out of where you were?

11 A. Yeah.

12 Q. Okay. So you put your hands on the top of the  
13 BART track?

14 A. M-hmm.

15 Q. And then what happened?

16 A. And I said, "Excuse me. Could somebody please  
17 help me?"

18 And somebody said, "What are you doing down  
19 there? No, we can't."

20 Q. Do you know who that was?

21 A. No.

22 Q. Okay. And then what happened?

23 A. Then a lady said, "Don't worry. We'll get you  
24 out of there."

25 Because I know that I had tried to get out,

1     though I don't remember, because my shoes were off, and  
2     they were buckled, so I must have struggled to get up.

3           Q.     Okay. Do you know who that lady was?

4           A.     No, but there were three people who took me  
5     out.

6           Q.     And do you know who any of those three people  
7     were?

8           A.     No.

9           Q.     Did he they get you up on the platform?

10          A.     Yes.

11          Q.     Do you know -- did you lose consciousness at  
12     all?

13          A.     I think so. Either that -- yes, I think so.

14          Q.     Because you have -- a little bit of gap of  
15     time?

16          A.     Yeah. I mean, I don't remember finding the  
17     crawl space or whatever they call the space underneath  
18     the platform.

19          Q.     The crawl space you said?

20          A.     Yeah.

21          Q.     Okay. All right. So then you got up on the  
22     platform, and then what happened?

23          A.     I was lying down and I was bleeding and  
24     everything, and --

25          Q.     Where were you bleeding?

**EXHIBIT “B”**

1 UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
3

4 PATRICIA NASH,

5 Plaintiff,

6 v.

No. C 05 5307 VRW

7 BAY AREA RAPID TRANSIT DISTRICT,

8 Defendants.  
9  
10  
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CERTIFIED COPY

12 DEPOSITION OF DAVID L. SANBORN

13 Thursday, June 7, 2007

14 San Francisco, CA  
15  
16

17 Reported By:

18 DEBBIE MAYER, RPR CRR CRP

19 California CSR No. 9654  
20

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23  
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25 FILE NO.: A104784

1 Q. Do you remember the name of the form?

2 A. No, I do not.

3 Q. Where did you ask her to send the form back  
4 to?

5 A. It had an enclosed envelope with it,  
6 prestamped, so that -- and actually, Gina said she would  
7 make sure it got mailed.

8 Q. Okay. Did she mail such a form to BART?

9 A. I do not know.

10 Q. Okay. Okay. So, back to the first  
11 conversation with Ms. Nash, what did she tell you about  
12 the accident?

13 A. It was the day after the accident that I  
14 talked to her on the telephone at her home. She said  
15 that she had come down the stairs at 16th Street after  
16 some training she was involved in, that she went down  
17 the stairs she normally goes down to the platform that  
18 she normally uses to go back home, that she did not  
19 see -- or contact the station agent. She did mention  
20 that she usually does talk to the station agent, but  
21 this time she did not.

22 She went down to her normal spot on the  
23 platform waiting for her train. She heard an  
24 announcement that said the next train in was going to be  
25 a shorter train, six-car. She knew she was at a spot

1 that she needed to move further to the north, to the  
2 left, to be where that train was going to be, she  
3 thought. She then said that she found out from  
4 conversation with the station agent, after she was hurt,  
5 that that announcement was for the other platform, that  
6 the train she did mean to board was a normal-sized  
7 train. She repositioned herself, she heard the train  
8 stop, felt with her cane that she always said she  
9 uses -- she doesn't use dogs -- felt for the car doors,  
10 side-swiped.

11 She did say that she did not feel for the gap,  
12 she did not feel for the floor like she usually does,  
13 and she stepped forward and fell in the hole. As soon  
14 as she fell to the trackway, she sensed the heat of the  
15 cars and backed away from them, which happened to be  
16 back underneath the lip of the platform, and she huddled  
17 back in there until she felt the train leave.

18 Then she put her cane up above the platform  
19 edge and was waving it and yelling for help, at which  
20 time she said someone yelled down to her, and then  
21 people came down and helped her back up on the platform,  
22 and then helped her medically. So, that was the whole  
23 conversation related to the accident.

24 Q. Did she describe the train going -- running  
25 over her, or going over her?

1       A.    No, she said it "went by" her because she was  
2 in the hole.

3       Q.    Right, but did she describe the feeling or  
4 anything about what it was like?

5       A.    No, she did not.

6       Q.    Did she indicate that she had lost some memory  
7 about that, that she couldn't remember what that was  
8 like?

9       A.    No, she did not. In fact, her -- in both  
10 conversations we had about the accident, she related it  
11 exactly the same way and did not relate anything  
12 about -- she seemed to remember everything that  
13 happened, including getting up and talking to the  
14 station agent she normally talks to up on the platform.  
15 She remembers the ambulance ride, she remembered getting  
16 the switches, and she remembered going home.

17       Q.    Did she say why she didn't talk to the station  
18 agent that day when she --

19       A.    No, she did not. I'm sorry.

20           MR. HAZELWOOD: Take your time.

21           THE WITNESS: Okay.

22 BY MR. KASHDAN:

23       Q.    Did she say anything about she tried to but  
24 couldn't find the agent?

25           MR. HAZELWOOD: Assumes facts not in evidence.

1    yeah.

2           Q.    But theoretically you could imagine an  
3    accident where that could happen?

4           A.    In my investigations of accidents, it's  
5    amazing what people can do when they're injured.

6           Q.    But sometimes they can't move?

7           A.    I -- I can't answer that.

8           Q.    Yeah, okay.  When she told you she "did not  
9    feel for the floor like she usually does," did she  
10   actually have a memory of not feeling for the floor, or  
11   she figured that's what had to happen because somehow  
12   she fell?

13          A.    By the statements she made in the first phone  
14   conversation and second phone conversation, and again at  
15   the meeting where I met her at the Task Force, she said,  
16   exactly:  "I felt for the doors, I felt the sides, and I  
17   forgot to feel for the floor, and I should have felt for  
18   the floor."  That was her exact statement.

19          Q.    Okay.  But if you know, if you could tell by  
20   any other words she said, could she have been saying  
21   that the fact she fell proves that she forgot to do  
22   that, or did she really have a distinct memory of  
23   forgetting to do that?

24          A.    The way I read her conversation --

25                MR. HAZELWOOD:  Question calls for



1 speculation, but go ahead and if you can.

2 A. I felt and wrote down in the notes I did make  
3 after that conversation is that she forgot to feel for  
4 the floor.

5 BY MR. KASHDAN:

6 Q. Okay. So you do have notes of this  
7 conversation?

8 A. I put it in a short report that I made after  
9 the fact --

10 Q. Okay.

11 A. -- after the second conversation.

12 Q. Did you personally talk to any other BART  
13 employees or anyone else who was a witness to any of the  
14 events in this accident?

15 A. Yes, I did. I talked to the station agent  
16 after I received a report from her.

17 Q. Which one? There were actually two who  
18 submitted reports.

19 A. I'm trying to remember her name. I'm sorry, I  
20 can't remember her name right now.

21 Q. That's Stacy Owens or Linda Ramirez?

22 A. Linda Ramirez.

23 Q. And this was on a phone call?

24 A. Yes.

25 Q. Do you have any notes of that phone call?